

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: LOWER MANHATTAN DISASTER SITE
LITIGATION

IN RE: COMBINED WORLD TRADE CENTER
AND LOWER MANHATTAN DISASTER SITE
LITIGATION

JOHN LOMBARDI AND LISA LOMBARDI

Plaintiffs,

21 MC 102 (AKH)

21 MC 103 (AKH)

**AFFIDAVIT OF DELAY IN RESPONSE
TO THE JULY 25, 2012 COURT ORDER
OF JUDGE ALVIN K. HELLERSTEIN**

05CV1678

STATE OF NEW YORK)
)s.s.:
COUNTY OF NEW YORK)

John Lombardi being duly sworn, hereby deposes and says:

1. I am the Plaintiff in the above captioned matter and respectfully offer this affidavit of delay in consideration of reinstating my case against the defendants listed in the above captioned mater.

2. I worked at the World Trade Center site, including the Pile and One Liberty Plaza, from approximately September 11, 2001 until March 1, 2002. While I was there, I was working as an Officer in the National Guard, retained by New York State to help set up the morgue, and dug and carried remains of the site.

3. After my exposure at The World Trade Center site and at One Liberty Plaza, I was diagnosed with Acid Reflux, Airway Hyperactivity, Asthma, Bronchitis, Carpal Tunnel, Chronic Cough, Conjunctivitis, COPD, Dyspnea, GERD, Migraines, Optic Problem, Orthopedic Injuries, PTSD, RADS, Restrictive Lung Defect, Restrictive Lung Dysfunction, Sinusitis, Skin Rashes, Itches, Fungus, Lesions, and an Upper Respiratory Infection. I developed a lot of injuries during my time down there, and they have all caused a great deal of stress for me and my family.

4. After watching my injuries continually worsen after diagnosis, I had decided to file a claim in order to receive compensation for me and my family for the injuries I sustained as a result of my exposure at the Pile and One Liberty Plaza. I had served proudly for my country, and this effort had gotten me severely sick.

5. My injuries were diagnosed by my doctors between 2002 and 2008 and my medical conditions have been progressing ever since.

6. Throughout the seven years that my case has been pending, I have always complied with each and every request that was asked of me by attorneys, including but not limited to, reviewing legal documents and to certify the claims I am bringing. I have remained available to the Court and the parties in my lawsuit.

7. In the fall of 2011, six years after I brought my claim, I was asked again to verify information that was going to be populated to the Court's Discovery Database. I signed a statement verifying that the information on my case that was to be populated to the Court's Discovery Database was true and correct to my knowledge, and that I was aware that if any of the information was willfully false that I would be subject to punishment. I believed that by signing this statement that I was verifying the truthfulness of the information that was to be populated in the Court's Discovery Database. See a copy of the Verification I signed at Exhibit 1.

8. At the same time as I was certifying my discovery again I learned that I needed to make a decision as to whether I wanted to keep pursuing my lawsuit or if I wanted to withdraw my lawsuit and file a claim with the Victims' Compensation Fund under the Zadroga Act instead.

9. There was a lot of information being reported in the news about Zadroga. My attorneys were also providing me with information they were obtaining about the Victims' Compensation Fund. There was so much information about which injuries were being covered and not covered. I was concerned as to which route would be the best for me.

10. I was faced with a great deal of confusion as well as added stress in making such an important decision in a relatively short period of time. I knew that I needed to make a decision by law by

January 2, 2012 to either proceed with my lawsuit or to discontinue my lawsuit and file a claim in the Victims' Compensation Fund. My injuries were serious, so I really needed to make sure that I was making the right decision for my family and I

11. As I was deciding, I knew that my lawsuit was already pending for five (5) years. Therefore I wanted to seek information about the Victims' Compensation Fund as an alternative for some type of compensation, since I had been waiting for such a long time in the lawsuit. At one point in time, I was seriously considering withdrawing my lawsuit and proceeding with a claim in the Victims' Compensation Fund. In the fall of 2011 I authorized my attorneys to discontinue my lawsuit prior to the January 2, 2012 deadline in order to pursue a claim in the Victims' Compensation Fund.

12. Once the January 2, 2012 deadline approached changed my mind and made a final decision to continue my lawsuit. I changed my mind on December 27, 2011, right after the Christmas Holiday.

13. Once I finalized my decision to proceed with the my lawsuit, I was informed that that I needed to verify yet again the information that was populated in the Court's Discovery Database. I was asked to sign a new Certification that was substantially similar, and to me, almost identical to the Verification I signed months earlier. A copy of this new Certification is attached as Exhibit 2.

14. The two documents that I signed verifying the information for my case, which was populated in the Court's Discovery Database that are attached hereto as Exhibits 1 and 2 are substantially the same and nearly identical. To this date I am still perplexed that that my case comes down to the language on these forms as opposed to the facts of my case.

15. Ever since I brought my lawsuit five years ago, I have always made sure that I was complying with all of my obligations, making sure that everything was up to date and in order.

16. All of the discovery information in my case was certified years ago. It is apparent that nobody has looked at the discovery information in my case.. The fact that my case is being jeopardized solely over the language on a Certification form is outrageous. As demonstrated above, I verified the information in the Court's discovery database at least two times within months of each other. Over the span of seven years that my case was pending, I was always actively involved in the prosecution of my

case, as this is very important to me. I was shocked to learn that the Court dismissed my case a few weeks ago. I have always been involved in the prosecution of my case for the past seven years. I have certified under oath and under the penalties of perjury numerous times now, in multiple formats the discovery information in my lawsuit. The fact that my I am receiving an order in 2012, seven (7) years after I filed my lawsuit makes me wonder whether anyone has even looked at my case.

17. One of the reasons why I accepted the settlements with the City and its contractors and the Port Authority of New York and New Jersey is because I knew that I would have the chance to seek additional compensation from the remaining defendants in my case.

18. The only time that I was hesitant in prosecuting my case was when I was exercising my statutory right prior to the January 2, 2012 deadline as to whether to proceed with my lawsuit. I should not be penalized for exercising a statutory right especially when such a decision was extremely difficult and caused great stress on me.

19. The ordeal I have faced since working down at the Pile and One Liberty Street has been devastating to me and my family.. I understand that I was serving my Country proudly when I was down at the site; however, these injuries should never have to be endured by anyone.

20. At first, I believed that the best avenue to pursue my claim was through the Victims' Compensation Fund. However based on all of the new information that was being provided to me as the January 2, 2012 statutory deadline was approaching I decided to change my mind and proceed with my lawsuit.

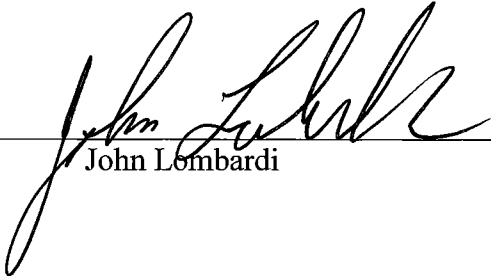
21. Once I finally ruled out the Victims' Compensation Fund as an avenue for compensation, I immediately consulted with my attorney and made sure that all of my discovery obligations were satisfied and signed yet another certification to my discovery responses.

22. I have decided to put my claim in the hands of the judicial system and am relying on the Court to do what is fair and just.

23. Given the facts and circumstances surrounding my case, I hope that the Court will reconsider its decision in dismissing my case and reinstate my case so I can at least have a chance in

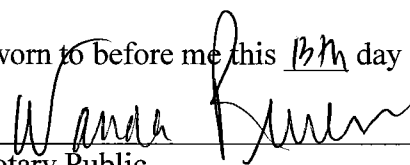
receiving the compensation I feel that I deserve for the injuries I sustained while working in Lower Manhattan following the Collapse of the World Trade Center.

Pursuant to 28 U.S.C. §1746 I declare under the penalty of perjury that the foregoing is true and correct.



John Lombardi

Sworn to before me this 13th day of August, 2011



Notary Public

WANDA Y. RIVERA
Notary Public, State of New York
No. 01RI6074197
Qualified in New York County
Commission Expires May 13, 2011

EXHIBIT 1

09/19/2011 21:27

NO. 273



05CV01678

VERIFICATION

I verify that the foregoing responses are true and correct to my knowledge. I am aware that if any of the foregoing responses are willfully false, I am subject to punishment.

I further verify that certain facts and matters set forth in these responses are not within my personal knowledge, and that such facts and information have been assembled by my attorneys, Worby Groner Edelman & Napoli Bern, LLP based upon medical records, documents and other information collected by myself and my attorneys.

Dated: 9/15/11

Signature

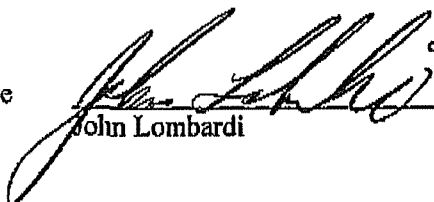
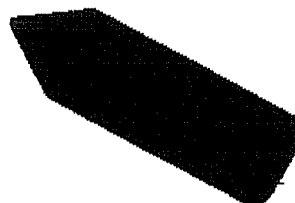

John Lombardi

EXHIBIT 2

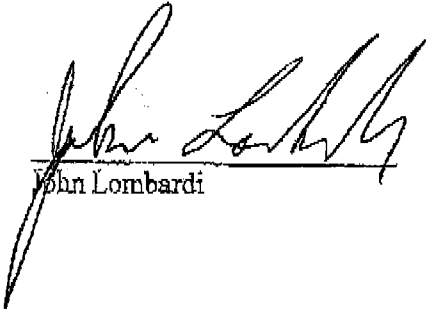
05CV1678

CERTIFICATION

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that I have reviewed those questions and answers contained in the database docket 21MC102/103 (AKH) with reference to my individual claim, and those responses are true and correct.

Executed 1/6/ 2012

Signature


John Lombardi